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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/810,002

03/26/2004

Brian E. Healy

J-3949

7734

28165 7590 11/10/2009
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EXAMINER

JACYNA, J CASIMER

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

11/10/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/810,002	Applicant(s) HEALY ET AL.	
	Examiner J. Casimer Jacyna	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,5,6,17,19-26,28-35,40,43-46 and 48-54 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,6,17,30-35 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-26,28,29,43-46 and 48-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3754

1. Claims 3, 5, 6, 17, 30-35 and 40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/7/2007.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 19-21, 24, 25, 28, 43, 44, 48 and 50-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Harris et al. 3,149,761. Harris discloses an actuator cap including a main wall 36, 43-46, that varies in cross section along a vertical axial dimension at 48 and 51, a flexible actuator member 20 that is integral with the main wall and flexible at 52 and horizontally extends transversely from the main wall with an outer peripheral surface at 21 that extends laterally beyond portion 43 of the main wall but does not extend past the greatest lateral extent of the main wall at 37 and an upright portion 18 with a curved outer surface surrounding 16 that engages with an internal surface of a housing at 26, 27 wherein 18 prevents inadvertent actuation of flexible actuator with 34 and guides the movement of 18 with 21. In regard to claim 43, Harris discloses a generic arcuate gusset 19. In regard to claims 24 and 51, Harris discloses the housing to include an outlet opening at 31 that is larger than the radius of held container 11 at location 13 or 16 on the container. In regard to claims 48 and 50, 23 is an inner circumferential wall that receives the nozzle 14 with an interior valve stem 13, and 19 is an inwardly tapered flange that snap fits over the container at 16.

Art Unit: 3754

4. Claims 22, 23, 26, 45, 46 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris et al. 3,149,761. Harris discloses an actuator cap substantially as claimed but does not disclose the specific claimed dimensions. However, one of ordinary skill in the art would have considered the actual dimensions of the container and actuator to be design considerations that are obvious to and well within the scope of knowledge of one of ordinary skill in the art. In regard to claim 49, it is well known in the art to use ribs to increase the friction between two surfaces in order to better hold the two surfaces together and one of ordinary skill in the art would have considered the use of ribs on wall 23 to be obvious.

5. Claims 19-21, 28, 29 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Durso 3,608,785. Durso discloses an actuator cap including a main wall 36 that varies in cross section along a vertical axial dimension with a narrow cross section adjacent 37 and a wider cross section adjacent 38 in figure 2, a flexible actuator member 32 that is integral with the main wall 36 and horizontally extends transversely from the main wall with an outer peripheral surface that engages 42 and extends laterally beyond portion 31 of the main wall but does not extend past the greatest lateral extent of the main wall at 34 and an upright portion 41 with a curved outer surface 42 that engages with an internal surface of a housing as is the central aperture of 16 that is part of housing 14 wherein 41 prevents inadvertent actuation of flexible actuator 32 by hiding and covering 32 within 14, preventing a lateral force from actuating 32 and only allowing a direct downward force to bend and actuate 32.

Art Unit: 3754

6. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Durso 3,608,785. Durso discloses an actuator cap substantially as claimed but does not disclose the specific claimed dimensions. However, one of ordinary skill in the art would have considered the actual dimensions of the container and actuator to be design considerations that are obvious to and well within the scope of knowledge of one of ordinary skill in the art.

7. Claims 19-21, 28 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Knapp 2,552,857. Knapp discloses an actuator cap including a main wall B that varies in cross section along a vertical axial dimension with a narrow cross section adjacent 18 and a wider cross section adjacent 56, an actuator member that includes portions 62, 58, 56 and 60 with the actuator being flexible at spring 60 and being integral with the main wall using the definition of integral as being formed as a unit with another part as cited in the Merriam Webster on line dictionary at www.m-w.com wherein the actuator extends from the main wall with 60 and 58 and with portion 62 of the actuator horizontally extends transversely of the main wall with an outer peripheral surface 68 that extends laterally beyond the portion of the main wall surrounding 56 and 60 but does not extend past the greatest lateral extent of the main wall at 70 and an upright portion 22 with a curved outer surface that engages with an internal surface of a housing 24 wherein 22 prevents inadvertent actuation of flexible actuator 62 by covering and securing portion 64 of the actuator at 66 which prevents a lateral force from actuating 62 and only allows a direct downward force to actuate 62 with portion 66 also guiding the actuator by providing a pivot point for the actuator.

Art Unit: 3754

8. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knapp 2,552,857. Knapp discloses an actuator cap substantially as claimed but does not disclose the specific claimed dimensions. However, one of ordinary skill in the art would have considered the actual dimensions of the container and actuator to be design considerations that are obvious to and well within the scope of knowledge of one of ordinary skill in the art.

9. Claims 43-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Batistelli 3,473,700. Batistelli discloses an actuator cap 10 for a container 28 including a main wall 12, 31, 13, 14 and 46 that varies in cross section and has a vertical axial dimension, a flexible actuator member 35 that horizontally extends transversely from 36 to 32 as seen in figure 3 with an outer peripheral surface located in channels 32 and that does not extend past the greatest lateral extent of the main wall as is the outer surface of the arms at the ends of pointers 20 and 21 in figure 3 but does extend beyond a portion of the main wall as is the inner wall forming channel 32, and an upright portion as is the vertical flange at the end of pointer 30 in figure 1 that is curved between 18 and 30 and includes aperture 36 that secures actuator 35 and is thereby adjacent to the actuator 35 and prevents inadvertent actuation and includes a gusset as is the horizontal flange at the end of pointer 30 in figure 3 that is bent or arcuate between 18 and 30 in figure 1 and is on the bottom surface of upright portion which is facing the interior of the device and is thereby an internal surface.

10. Applicant's arguments filed 7/9/2009 have been fully considered but they are not persuasive. The amendment of 7/9 only defines a portion of the main wall to decrease

Art Unit: 3754

in cross section between the first and second ends. The main wall of Batistelli has a first end adjacent 22 and a second end at 48 with the portion 46 as seen in figure 3 having a decreasing cross section and being between the first and second ends as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/
Primary Examiner, Art Unit 3754